IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Idan Puri
Vs.
Union of India & Ors.

S.B. CIVIL WRIT PETITION NO.3748/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 16th October, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.Narpat Singh, Advocate for the petitioner.
Mr.Salil Trivedi, Advocate for respondents.

BY THE COURT

This writ petition is directed against the award dated 23rd November, 2001 passed by the Industrial Tribunal-cum-Labour Court (for short 'labour court') whereby the learned labour

court while rejecting the reference held that non grant of compassionate allowance to the petitioner-workman by respondent management was legal and justified and the petitioner was not entitled to any relief.

The claim set up by the petitioner before the learned labour court was that he was appointed with the Railways in Carriage Wagon Workshop, Jodhpur on 25th April, 1956 and was removed from their service on 27th February, 1971. At the time of removal he was serving with the respondents on the post of Skilled Fitter on monthly salary of Rs.256/-. The petitioner submitted an application to the respondents on 09th October, 1971 for compassionate allowance. When nothing was done, he approached to the Central Administrative Tribunal, Jodhpur (for short 'CAT'), which by its judgment dated 07th September, 1994 directed the respondents to decide the representation of the petitioner in the light of the judgment passed by Bangalore Bench of the Tribunal in V. Prakashan vs. D.R.M. Southern Railway, Hoogli & Ors. The respondents thereafter by the order dated 13th May, 1995 rejected the

representation of the petitioner. In these circumstances, he made an application to the appropriate Government which made a reference to the learned labour court and thereafter the aforesaid award was passed.

I have heard Mr.Narpat Singh, learned counsel for the petitioner and Mr.Salil Trivedi, learned counsel for the respondents and perused the record.

Mr.Narpat Singh, learned counsel for the petitioner argued that the learned labour court committed an error of law in taking into consideration the affidavit of sole witness of the Management Manvendra Singh who did not appear in the witness box for cross-examination. The averments of their reply could not be relied upon by the learned labour court. It was argued that the learned labour court wrongly recorded a finding that the petitioner did not produce copies of the affidavits of Bhanwar Lal and Gopal Das whereas Form No.3 under Rule 36 of Rajasthan Industrial Disputes Rules containing the list of documents clearly shows that both the affidavits were

produced by the petitioner before the learned labour court. Certified copy of the Form No.3 has been obtained by the petitioner from the learned labour court and produced before this Court. It has been argued that the learned labour court did not correctly appreciate the provisions contained in Rule 309 and 310 of the Manual of Railway Pension Rules, 1950 which envisage for compassionate allowances to the removed or dismissed employees of the Railway and the learned labour court wrongly rejected the claim of the petitioner.

On the other hand, Mr. Salil Trivedi, learned counsel appearing for the respondents argued that the petitioner was dismissed form service by order dated 27th February, 1971 as he was found guilty of a charge involving moral turpitude. In fact when he was working as Skilled Fitter in respondent Workshop, Jodhpur, he was arrested by SSRPF on 20th May, 1968 for offence under Section 3 of the Railway Property (under Unlawful Possession) Act, 1966 and a criminal case was registered against him. Separately, departmental proceedings were also initiated against him pursuant to which he was

dismissed from service. The charge levelled against him was that he was found in possession of Railway Property namely 8 copper rivet pieces 4" long, one half portion of 3" diameter of brass washer, one small bundle of scrap copper wires in pieces and two bent up brass screw ½" long weighing 390 gms. It has been argued that the petitioner is not entitled to compassionate allowances under the manual of Railway Pension Rules, 1950 and a sum of Rs.575/- was sanctioned to the petitioner on compassionate ground by the competent authority which the petitioner did not accept. It is submitted that Railway Board issued a Circular dated 16th November, 1957 wherein it was provided that Pension Rules will be applicable to all the Railway Employees who entered in service on or after the date of issue of Railway Board's letter dated 16th April, 1957 and that all the non-pensionable railway servants who were in service on 01st April, 1957 or have joined the Railway service between that date and the date of issue of this order dated 16th November, 1957 had to opt for these benefits in preference to their existing retirement benefits. This Circular was later on amended by the Railway Board's Circular dated 09th May, 1958 in which it

has been provided that every non-pensionable railway servant who was in service must exercise option for pension or P.F. and those who do not exercise such option by 30th June, 1958 shall be deemed to have opted for pension. In partial modification of this order, the President of India subsequently decided that only such of the railway servants who were governed by the pension system or whose option is incomplete in any way shall be deemed to have retained the existing retirement benefits under State Railway Provident Fund Rules. The petitioner having not exercised the option specifically would be deemed to have opted in favour of the existing retiring benefits under SRPF Rules. When the petitioner did not come under the pension scheme, the Manual of Railway Pension Rules, 1950 would not apply to his case and there was thus no question of grant of compassionate allowances after dismissal of the petitioner from service according to para 309 and 310 of the Rules of 1950. Learned counsel for the respondents also argued that the petitioner was dismissed from service on 27th February, 1971 and he challenged the order of his dismissal before various courts and lost up to the Hon'ble Supreme Court. He

submitted the application for compassionate allowances enormously delayed on 09th October, 1991 more than 20 years after the date of his dismissal. Such an application was even otherwise liable to be rejected on the ground of delay and latches.

I have considered the arguments advanced by the learned counsel for the parties and perused the records.

In the present case, even though the petitioner as per his own showing was dismissed from service on 27th February, 1971. He for the first time submitted an application to the respondents enormously delayed on 09th October, 1991 for grant of compassionate allowances. While on the one hand, the respondents asserted that the petitioner did not opt the pension scheme as per the requirement of Railway Board's circular referred to above, on the other hand, the petitioner submitted that he did submit such option and in support thereof he claims to have produced two affidavits of his fellow employees namely Bhanwar Lal and Gopal Das before the

labour court. The learned labour court however has given finding that no such affidavits were produced before it nor those witnesses have been produced in evidence. It would thus be evident that the petitioner before the learned labour court failed to prove any findings with regard to his option. The learned labour court therefore rightly concluded that the petitioner was not a pension optee. In the circumstance therefore when the petitioner did not opt for pension, the Rules of 1950 cannot be held applicable to his case.

Even otherwise para 309 and 310 of the Rules of 1950 gives a discretion to the Railways to decide whether or not to grant compassionate allowances to railway servant who is removed/dismissed. Rule 309 clearly provides for giving such compassionate allowances to the railway servant who is removed/dismissed "when he is deserving a special consideration" such a compassionate allowances shall not exceed two-third of the pensionary benefits which would have been admissible to him if he had retired on medical certificate. Rule 310 further provides that each case has to be considered

on its merit and a conclusion has to be reached on the question whether there were "any such extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interest of Government, unduly hard on the individual." This very Rule further provides that "Where it can be legitimately inferred that Railway servant's service has been dishonest there can seldom be any good case for award of compassionate grant and/or allowances.

In the present case, even if the Rules of 1950 were to be held applicable to the case of the petitioner one wonders whether Railway would have still considered it appropriate to grant compassionate allowances to the petitioner, given the kind of charges on which he was dismissed from service. Moreover, when it is brought to the notice of the Court that petitioner in earlier round of litigation challenged the order of his dismissal and lost up to the Hon'ble Apex Court, there was no reason for him not to have prayed for this relief simultaneously in the self same litigation and now he would be estopped from claiming such relief being barred by principal of

constructive res-judicata. He has also not been able to give any satisfactory explanation for unreasonable delay in making prayer to the Railway for the first time on 09th October, 1991 when already he was dismissed from service on 27th February, 1971.

A similar question came up before the Division Bench of this Court in Kishan Lal Chadha vs. Union of India & Ors., in D.B. Civil Writ Petition No.1564/2000 decided on 12th December, 2002 wherein also the prayer was made for grant of compassionate allowance after the appellant had lost in the first round of litigation against the order of dismissal. In the facts of that case, while considering the scope of Rule 41 of Central Service (Pension) Rules, 1972, a provision similar to Rule 309 and 310 in the Rules of 1950, the Division Bench observed as under:-

> "Apart from the fact that the petitioner has in fact never pressed for this compassionate allowance under proviso (i) to rule 41(1), it may be observed that it is for the concerned competent authority to consider the case in appropriate cases as to whether the dismissed employee deserves any special consideration with regard to the sanction of compassionate

> allowance. No such case has either been set up or has been made out and therefore it is not necessary for this Court to examine as to whether the petitioner was entitled to this compassionate pension or not and it appears from the facts of this case that the concerned competent authority may have found the petitioner liable to punishment for the allegations for which he was dismissed way back in 1975 and even otherwise it is too late for the petitioner to seek such a relief and the petitioner has in fact not asked for it in his earlier litigation and in the opinion of this Court rightly so."

In view of the aforesaid discussion, I do not find any merit in the present writ petition and the writ petition is therefore dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K. Chouhan/-